IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 827 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANCHANBEN CHANDULAL MEHTA - Petitioner(s)
Versus
STATE OF GUJARAT & 6 - Respondent(s)

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Appearance :
MR KETAN D SHAH for Petitioner(s) : 1,
MS MAITHILI MEHTA AGP for Respondent(s) : 1 - 2,5 - 6.
MR PRASHANT G DESAI for Respondent(s) : 3 - 4.
MR MS RAO for Respondent(s) : 7,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/02/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed

for an appropriate writ, order and/or direction declaring that the respondents have no competent jurisdiction, authority or power to allot privately owned properties to any private party.

2. It is the contention on behalf of the petitioner that the petitioner was the owner of the land bearing City Survey No.3447/8 situated at Ward No.2 of Bhuj, which she has purchased from one J.K. Construction Company by registered sale-deed. It is the contention on behalf of the petitioner that after the devastating earthquake and after the TP Scheme was implemented, some portion of the land has been allotted to the respondent No.7. It is the contention on behalf of the petitioner that the respondents have no authority to allot the land owned by the petitioner (private party) to any other private party.

3. An affidavit in reply is filed on behalf of the respondents inclusive of respondent No.7. It is the contention on behalf of the TP Authority and

the State Government that the TP Scheme No.4 has been sanctioned and there is a Final Scheme under the TP Act and now it has become part of the Act. It is also further submitted that at the time of Preliminary TP Scheme as well as Draft TP Scheme, the objections were invited, however, at no point of time, the petitioner has submitted her objection and has allowed the TP Authority to proceed further with the scheme and now when the scheme has been sanctioned and as there is a TP Scheme, it is not open for the petitioner to challenge the same as once it has become part of the Act. It is also further submitted on merits that under the provisions of the TP Act, certain lands are required to be deducted by way of compulsory deduction for the purpose of implementation of the TP Scheme such as, reconstitution of the plots and the land required for some other public purpose. It is further submitted that the land bearing City Survey No. 3447/8 of Bhuj was denoted as OP No.1881 admeasuring 300.89 sq mts and in lieu of the said OP, reconstituted Final Plot No.1196

admeasuring 210.541 sq mts is allotted in joint ownership inclusive of the petitioner i.e. Kanchanben. It is submitted that the land forming part of OP No. 1881 other than the Final Plot No. 1196 has been given on reconstitution of the plots in favour of the respondent No.7 which is now forming part of Final Plot No. 1195. It is further submitted on behalf of the respondent No.7 that the respondent No.7 was the owner of the land bearing City Survey No. 1759 admeasuring 480.82 sq mts and on implementation of the TP Scheme No.4, the respondent No.7 has been allotted land admeasuring 336.90 sq mts being Final Plot No.1195 and now the Final Plot No.1195 is also forming part of portion of land land which was occupied by the petitioner. It is submitted that on reconstitution of the plots and on allotment of Final Plot No. 1195, the land which was required to be taken over from the respondent No.7 has been taken over and even the respondent No.7 has been handed over the Final Plot No. 1195 which is inclusive of some of the land forming part of Survey No. 3447/8

i.e. OP No.1881. It is submitted on behalf of the respondents that the contention on behalf of the petitioner that under the TP Act, the State Government have no jurisdiction and/or authority to allot land owned by the private party to the another private party has no substance at all. It is submitted that under the TP Act for the purpose of implementation of the TP Scheme and while reconstituting the plots, the land owned by the private party can be alloted to other private party and even the land from the other party can also be handed over to some other party for the purpose of implementation of the TP Scheme and therefore, it is requested to dismiss the present special civil application.

4. Heard the learned advocates appearing on behalf of the respective parties.

5. The only contention on behalf of the petitioner is that the petitioner was the owner of the land bearing Survey No. 3447/8 and some other City Survey and some of that land has been allotted

to the respondent No.7 which according to the petitioner is not permissible. First of all, it is required to be noted that at present, the TP Scheme No.4 has become final and it has become the part of the Act. It is also required to be noted that before finalization of the TP Scheme, under the provisions of the Act, Preliminary TP Scheme is required to be submitted and before that objections are to be invited and after considering the objections, the Preliminary TP Scheme is required to be sent to the State Government and the State Government is required to consider the said Scheme along with the objections and thereafter, the State Government is required to consider the Preliminary TP Scheme and sanctioned the same. Thereafter, the Draft TP Scheme is required to be submitted and before that also objections are to be invited and thereafter along with the objections it is required to be sent to the State Government for its approval and thereafter Final Scheme is sanctioned. In the present case also and as stated in the affidavit in reply, at every point

of time i.e. at the stage of Preliminary TP Scheme as well as Draft TP Scheme, the objections were invited, however, the petitioner has at no point of time submitted her objection. It is the contention on behalf of the petitioner that the petitioner was not served with any individual notice and therefore, the petitioner was not aware and therefore, the petitioner did not submit any objection. At this stage, the judgment of the Division Bench of this Court rendered in case of ***Chandravad Chunilal Shah & Ors. V/s. State of Gujarat & Ors*** reported in **2002(3) GLH 76** is required to be referred to. As held by the Division Bench considering another judgment of the learned Single Judge, the individual notice is not required and if the notice is published in the local newspapers as contemplated under Rule – 26 of the Rules inviting the suggestion and objection, the same will suffice. Under the circumstances, the contention on behalf of the petitioner that the individual notice was not served upon the petitioner and therefore, she could not submit

her objections, cannot be accepted. At the time when the objections were invited by giving public advertisement / notice as required under Rule – 26 of the Rules, the petitioner was required to submit her objections. The petitioner did not submit any objections and has allowed the TP Authority to proceed further with the Scheme and now when it is sanctioned, it is not open for the petitioner to challenge the same. It is required to be noted that so far as the present special civil application is concerned, there is no prayer of the petitioner challenging the Scheme, which has become final.

6. Even otherwise, on merits also, the contention on behalf of the petitioner that the land owned by private party cannot be allotted to any other private party cannot be accepted. Under the provisions of the TP Act, for the purpose of implementation of the TP Scheme and while reconstituting the plots, the land / adjoining land of a private party can be and is required to be allotted to other private party for the

purpose of reconstitution of the plots and implementation of the TP Scheme. No illegality has been committed on behalf of the respondents in allotting some portion of the land originally occupied by the petitioner to the respondent No.7. It is also required to be noted that even some portion of the land occupied and owned by the respondent No.7 has also been allotted to some private party while implementing the TP Scheme. Under the circumstances, there is no substance in the present special civil application. It is required to be noted at this stage that the land which has been allotted to the respondent No.7 under the Final TP Scheme has already been handed over to the respondent No.7 long back and the TP Scheme is also implemented fully.

7. For the reasons stated above, there is no substance in the present special civil application and the same is required to be dismissed and is accordingly dismissed. Notice discharged. Ad-interim relief, if any, stands

vacated forthwith. However, there shall be no order as to costs.

[M.R.Shah, J.]

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